

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JUDY MORRIS, an individual

Plaintiff,

V.

MITSUBISHI MOTORS NORTH AMERICA, INC., a California corporation; MITSUBISHI MOTORS MFG; MITSUBISHI MOTORS R&D OF AMERICA; MITSUBISHI MOTORS CORPORATION, a Japanese corporation; and JOHN DOES 1-10.

## Defendants.

NO: CV-08-0396-RMP

ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION IN *LIMINE* TO STRIKE  
STATISTICAL TESTIMONY OF  
JEYA PADMANABAN

This matter comes before the Court on Plaintiff's motion in limine to strike the statistical testimony and expert report of Defendants' expert witness Jeya Padmanaban, a statistician (Ct. Rec. 105). The Court has considered the Plaintiff's motion (Ct. Rec. 105), supporting memorandum (Ct. Rec. 107), and supporting declaration and exhibits (Ct. Rec. 106), Defendants' response (Ct. Rec. 168), opposing declaration and exhibits (Ct. Rec. 170), declaration and exhibits from Ms.

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1 Padmanaban (Ct. Rec. 169), and Plaintiff's reply (Ct. Rec. 193). In addition, the  
2 parties presented oral argument on their motions in *limine*.

3 Relying on Fed. R. Evid. 401 and 402, but not on Fed. R. Evid. 702, Plaintiff  
4 seeks exclusion specifically of the report and testimony of Ms. Padmanaban  
5 regarding the "airbag injury and fatality risk associated with the 1996-1997  
6 Mitsubishi Eclipse target vehicle group" (Ct. Rec. 106-1 at 5). Ms. Padmanaban  
7 states in a footnote to her March 4, 2010, report that "the target vehicle group  
8 includes vehicles with similar airbag components including the 1996-1997 model  
9 year Mitsubishi Eclipse, Mitsubishi Eclipse Spyder, Eagle Talon, Chrysler Sebring  
10 Coupe (excluding convertibles), and Dodge Avenger Coupe" (Ct. Rec. 106-1 at 2).  
11 Ms. Padmanaban concludes in her expert report that "available crash data confirms  
12 that in frontal crashes the serious injury risk to belted drivers in [sic]1996-1997  
13 Mitsubishi Eclipse target vehicle group with air bag deployment is low and is  
14 comparable to other passenger cars." (Ct. Rec. 106-1 at 8).

15 Plaintiff seeks to exclude the opinions of Ms. Padmanaban on the basis that  
16 she did not base her opinions on accidents that meet the substantial similarity  
17 standard required by the Ninth Circuit. In addition, Plaintiff argues that the  
18 statistics on which Ms. Padmanaban relied are not related to the same product as is  
19 at issue in this case.

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MOTION IN LIMINE ~ 2

1 Plaintiff relies on case law that states that evidence of other accidents must  
2 meet a substantial similarity standard to the accident at issue if being offered as  
3 direct proof of a design defect. *See e.g., White v. Ford Motor Co.*, 312 F.3d 998  
4 (9th Cir. 2002). Defendants respond that Ms. Padmanaban's testimony is  
5 admissible because it is being used to show the overall safety record of the  
6 Eclipse's airbag system, which the Defendants claim is relevant to the jury's  
7 determination of whether the protection afforded by the airbag system in Ms.  
8 Morris's car was reasonable, whether it performed as expected, the overall safety  
9 record of the Eclipse's airbag system, and whether the risk of harm presented by  
10 the accident could have been reduced through alternate designs, all of which they  
11 argue are relevant to RCW 7.72.030(1).

12 Defendants rely on Fed. R. Evid. 702 to assert that Ms. Padmanaban's  
13 statistical testimony, in addition to being admissible as relevant evidence, is also  
14 admissible as the type of data reasonably relied upon by experts and that her  
15 credentials qualify her as an expert. However, Plaintiff has not raised a challenge  
16 to Ms. Padmanaban's testimony or report on the basis of the rules governing expert  
17 witnesses. Rather, Plaintiff relies on Fed. R. Evid. 401 and 402 and Ninth Circuit  
18 law requiring evidence meet the "substantial similarity" standard.

19 Although Defendants contend that the target vehicle group statistics on  
20 which Ms. Padmanaban relied are vehicles that "have substantially similar airbag  
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23 MOTION IN LIMINE ~ 3

1 systems as the 1996 Mitsubishi Eclipse,” *see* (Ct. Rec. 168 at 2, note 1),  
2 Defendants do not submit any evidence to support that statement. Defendants do  
3 submit evidence to support that the target vehicle group statistics involved “frontal  
4 accidents involving 1996-1997 model year passenger vehicles with seat belted  
5 drivers, with or without airbags, and with accidents involving a Delta V ranging  
6 from 0 to 15 miles per hour, and with accidents involving a Delta V ranging from  
7 10 to 15 miles per hour” (Ct. Rec. 168 at 12).  
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9 Defendants also argue, without citing to Ninth Circuit or Supreme Court  
10 authority, that the admissibility of statistical evidence is not governed by the  
11 “substantial similarity” standard. In addition, Defendants contend that although  
12 the “substantial similarity” standard is required for evidence that is offered “to  
13 show that a product manufacturer had notice of a specific, dangerous condition or  
14 defect in its product,” Ms. Padmanaban’s statistical analysis is being offered “to  
15 demonstrate the overall safety record of the Eclipse’s airbag system, which will  
16 help a jury to assess whether the crash protection afforded by the airbag system  
17 was reasonable, whether it performed as expected, and whether the risk of harm  
18 presented by the accident could have been reduced through alternative designs”  
19 (Ct. Rec. 168 at 3).  
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21 The Ninth Circuit holds that “[a] showing of substantial similarity is  
22 required when a plaintiff attempts to introduce evidence of other accidents as direct  
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25 MOTION IN LIMINE ~ 4

1 proof of negligence, a design defect, or notice of the defect.” *Cooper v. Firestone*  
2 *Tire and Rubber Co.*, 945 F.2d 1103, 1105 (9th Cir. 1991); *White v. Ford Motor*  
3 *Co.*, 312 F.3d 998, 1008 (9th Cir. 2002). This Court concludes that Defendants’  
4 introduction of evidence to disprove negligence, a design defect, or notice of the  
5 defect also would necessitate meeting the substantial similarity standard.  
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7 However, evidence of dissimilar accidents may be admissible for other purposes,  
8 such as impeachment. *Cooper*, 945 F.2d at 1105 (9th Cir. 1991) (“Although the  
9 other-accident evidence may have had some prejudicial effect, it was highly  
10 probative of the credibility of the assertion of appellants’ experts that RH5 degree  
11 [a multi-piece truck rim] was generally safe”).  
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13       Although Defendants contend that Ms. Padnamaban’s testimony and  
14 statistical evidence will be introduced for purposes other than direct evidence to  
15 disprove a design defect or Defendant’s lack of notice of a design defect, that  
16 distinction will need to be addressed in the context of the trial. Ms. Padmanaban’s  
17 testimony and report relying on data from other accidents will not be admissible to  
18 disprove negligence, a design defect, or Defendant’s notice of a defect unless the  
19 Defendants are able to lay a sufficient foundation that the other accidents involved  
20 the same or similar airbags and meet the “substantial similarity” standard to the  
21 accident at issue in this case. However, the Defendants may be able to introduce  
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MOTION IN LIMINE ~ 5

1 Ms. Padnamaban's testimony and report for rebuttal depending on the evidence  
2 introduced by Plaintiff in her case in chief.

3 For the foregoing reasons, Plaintiff's motion (**Ct. Rec. 105**) is **GRANTED**  
4 in part and **DENIED** in part, consistent with the foregoing discussion, with leave  
5 for Plaintiff to renew the motion during trial.

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7 The District Court Executive is hereby directed to enter this Order and  
8 furnish copies to counsel.

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10 **DATED** this 17th day of December, 2010.

11  
12 *s/ Rosanna Malouf Peterson*  
13 ROSANNA MALOUF PETERSON  
14 United States District Court Judge  
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